

such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for “Government purposes” rather than for a specific military purpose.

(5) Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraph (f)(4) of this section. Whenever possible, the insertion in a lease of a provision restricting the use of land to a specific purpose will be avoided; use a term such as “Government purposes”.

(6) Property required for air defense sites, provided such property can be acquired by lease containing provisions in paragraphs (f)(4)(ii), (iii), and (iv) of this section and the right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) Assistant Secretary of Defense (MRA&L) approval is required when leases for air bases, Reserve Components facilities, or air defense sites can be obtained containing some but not all of the above listed provisions. Such approval is also required for leases for all other types of installations upon which permanent construction is to be placed by the Government when leases can be obtained containing similar provisions. In all cases, it must be in the best interest of the Government to acquire a lesser interest than fee title.

(8) Construction projects estimated to cost less than \$25,000 will not be considered a permanent construction for purposes of the above policy.

(g) *GSA Reimbursement.* Reimbursement to GSA for Standard Level User Charges (SLUC) and other costs incident to leasing will be in accordance with the applicable provisions of the Federal Property Management Regulation.

(h) *Nominal Rent Leases.* (1) Where premises are occupied by the Government at a nominal rent or rent-free basis, any alterations, improvements, and repairs necessary for occupancy may be considered as a cost of occupancy, i.e., in lieu of rent, for each year of the rental term. However, the total

cost of such alterations, improvements, and repairs, plus the nominal rental, during any year of the rental term may not exceed 15 percent of the fair market value at the date of the lease, unless the total cost plus nominal rental does not exceed \$2,000 per annum.

(2) When rental plus amounts to be spent by the Government for alterations, improvements, and repairs total more than \$2,000 and more than 15 percent of the fair market value of the premises at the date of the lease, a Certificate of Necessity is required.

(3) A Certificate of Necessity is not required for the cost of installing equipment, apparatus, appliances, machinery, fixtures, movable partitions, etc., which are not intended to become an integral part of the building and which may be removed without injuring or defacing the item or the building. Such property is considered to be the property of the Government. The lease or a supplement thereto should provide for the installation and removal of such equipment, etc.

(4) Under the limitations in 40 U.S.C. 278a, not more than 25 percent of the net rental for the original lease period, if less than one year, may be expended before a lease is actually renewed. If the whole period, including renewals, is less than a year, not more than 25 percent of the rent for such whole period may be expended for alterations, repairs, and improvements (20 Comp. Gen. 30; 29 Comp. Gen. 299). Where a lease, entered into by the Government for an original term of less than a year, is renewed for the following fiscal year, the net rental for the first year of the rental term, as distinguished from the original term, is for consideration in the computation of the amount that may be paid under the 25 percent limitation, after the lease is actually renewed.

(i) *Items Not Within the Purview of the Economy Act.* (1) The limitations in 40 U.S.C. 278a are not applicable to leases of unimproved land (38 Comp. Gen. 143).

(2) Where fixtures, alterations, and improvements are of such characters to be of a temporary nature, and are not permanently attached to the realty so as to prevent removal thereof without destroying their usefulness or damaging them or the realty, they do not

constitute alterations or improvements of the leased premises within the meaning of 40 U.S.C. 278a and therefore do not fall within the 25 percent limitation of that Act. Title to such temporary fixtures, alterations, and improvements remains in the Government (18 Comp. Gen. 144; 20 Comp. Gen. 105).

(3) Upon termination of leases, restoration of leased premises to the original condition is not considered an alteration within the purview of 40 U.S.C. 278a.

(4) When the Government is required by the terms of the lease to maintain the leased premises, such maintenance, together with the cost of such improvements and alterations as may be made by the Government, may not exceed the 25 percent restriction of the Act.

(5) Leaseholds acquired through condemnation proceedings are excluded from the purview of the Act of 30 June 1932, as amended (40 U.S.C. 278a).

(j) *Architectural Barriers Act*. The Architectural Barriers Act of 1968 (Pub. L. 90-480), 82 Stat. 718, 142 U.S.C. 4151, *et seq.*, as amended, requires that when Federal funding is used in the design, construction, or alteration of certain buildings or facilities, the buildings or facilities must be designed, constructed or altered to insure that physically handicapped persons will have ready access to, and use of, such buildings. In the Corps' leasing program, when Federal funds are used to make improvements to leased premises, it is necessary that the plans and specifications for the construction or alteration work be approved in accordance with guidelines published by the American National Standards Institute (ANSI), as implemented by DOD Construction Criteria Manual 4270.1-M, Section 5-1.6.

§ 644.142 Lease forms and instructions.

ENG Form 856 will be used for Corps of Engineers leases in the United States and possessions, and overseas, for the leasing of unimproved land. ENG Form 527 is recommended for leases of improved property in overseas areas. Standard Forms 2, 2A, or 2B (short form) will be used for all Corps of Engineers leases of improved property in the United States and possessions. Standard Form 2B is limited to

rentals not exceeding \$3,600 per annum. The General Provisions are on the reverse side of the short form lease.

(a) *Mandatory Clauses*. The following clauses must be included in all Corps of Engineers leases:

(1) Officials Not to Benefit clause (para 15 of ENG Form 527) is required by 18 U.S.C. 431.

(2) Gratuities clause (para 16a of ENG Form 527) is required by 5 U.S.C. 174d.

(3) Covenant against Contingent Fees (para 14, ENG Form 527) is required by 10 U.S.C. 2306(b).

(4) An Examination of Records clause (para 17, ENG Form 527) is required by 10 U.S.C. 2313(b). Exceptions to the use of this clause in 10 U.S.C. 2313(c) are permitted when the contractor is a foreign Government or agency thereof, or when the laws of the country involved preclude it. Also, if the Head of the Agency determines, with the concurrence of the Comptroller General, that the use of the clause would not be in the public interest, it may be omitted in leases covering land in foreign countries.

(5) The Nondiscrimination clause (Executive Order 11063, dated 20 November 1962) is required in all leases in the United States. It is desirable, but is not considered mandatory in overseas leases.

(b) *Hold Harmless Clauses*. "Hold harmless" clause will not normally be added to the lease forms. Where lessors insist upon such a clause, however, the following is suggested for use: "The Lessors (licensors) shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Government's use of the premises under the terms of this agreement and are not due to the negligence of the Lessors."

(c) *Escalator Clauses*. In those cases where a lessor expresses an unwillingness to enter into a lease, extending for a number of years, with a rental consideration that includes a fixed amount for utilities, the following clause may be inserted in the standard lease:

After the first term of the lease, the Lessor or the Government may, by giving notice at lease 90 days prior to the anniversary date of the lease, request an adjustment in rental payments based on an increase or decrease in

the cost of utilities. The request must be supported with full justification to include documentary evidence of actual utility costs incurred by the Lessor which are in excess of the amounts estimated at the beginning of the lease term. The requested adjustment in rent will be subject to negotiation, and if granted, will be provided by a Supplemental Agreement to this lease.

ACQUISITION OF RIGHTS-OF-ENTRY

SOURCE: Sections 644.155 through 644.157 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.155 General.

Sections 644.155 through 644.157 describe the procedures of the Corps of Engineers relative to obtaining rights-of-entry on lands for both military and civil works projects and in the Corps' acquisition programs for other Federal Government agencies. These procedures are applicable to all Division and district Engineers having real estate responsibilities.

§ 644.156 Definition.

A right-of-entry is a bare authority to do a specified act or series of acts upon non-Government-owned property or non-Government-controlled property without acquiring any estate or interest therein. The principal effect of a right-of-entry is to authorize an act which, in the absence of the right-of-entry, would constitute a trespass. The written instrument furnishes evidence of the permission granted to the government and the obligations, responsibilities, and liabilities assumed by the Government. It does not authorize any uses of the property by the Government other than those specified in the instrument.

§ 644.157 Procedures.

(a) ENG Form 1258, Right-of-Entry for Survey and Exploration, will be used to obtain authority from the owner of lands to be used for the purpose of making surveys, test borings, and other exploratory work as may be necessary to complete the particular investigation.

(b) ENG Form 2803, Right-of-Entry for Construction, will be used to obtain authority from the owner of lands to be used for construction purposes when all of the following conditions apply:

(1) A Real Estate Directive has been issued on an Army (military) or Air Force project, or the Chief of Engineers has approved acquisition in connection with a civil works project or for another Government agency.

(2) The construction schedule does not allow sufficient time to secure the right of possession by normal acquisition procedures.

(c) Upon execution of an ENG Form 2803, a copy thereof shall be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 on Army Military and Air Force acquisitions, and in all other cases to HQDA (DAEN-REA-P) WASH DC 20314, together with a proposed schedule of final acquisition of the necessary interests in real estate. If final acquisition is not contemplated within six months from the date of the right-of-entry, an explanation should also be furnished as to the reason for the delay.

(d) Division and District Engineers may modify ENG Forms 1258 and 2803, where necessary, to meet requirements of landowners, provided such modifications do not increase the scope of the liability or responsibility of the Government over that contained in the standard forms.

(e) It is necessary to recognize not only the effects of entry upon a particular parcel of land, but also the effects of the passage of any vehicle (land, air, or water) on the area traversed. All possibilities of disturbing effects on the countryside shall be considered and routes selected to eliminate or minimize such disturbances.

(f) Any cash settlements in lieu of restoration for damages, incurred under ENG Forms 1258 and 2803, will be consummated by supplemental agreement in accordance with subpart I.

PROCUREMENT OF OPTIONS PRIOR TO REAL ESTATE DIRECTIVES (MILITARY)

SOURCE: Sections 644.165 through 644.168 appear at 44 FR 31125, May 30, 1979, unless otherwise noted.

§ 644.165 Purpose and scope.

Sections 644.165 through 644.168 describe the procedures relating to the procurement of options to purchase real estate interests for Army or Air Force military requirements prior to the issuance of a real estate directive.

These procedures are applicable to all Division and District Engineers having military real estate responsibility.

§ 644.166 Authority and applicability.

(a) *Authority.* Subsections (a) and (b) of section 2677 of title 10, United States Code, as amended by section 707 of the Act of Congress approved October 27, 1971 (85 Stat. 412), provide that:

(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(2) As consideration for an option so acquired, the Secretary may pay from funds available to his department for real property activities, an amount that is not more than five percent of the appraised fair market value of the property.

(3) For each six-month period ending on June 30 or December 31, during which he acquires options under paragraph (a) of this section, the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives.

(b) *Applicability.* (1) Where land is needed for proposed construction and the siting of said construction is firm.

(2) When there is a definite indication of material enhancement in value due to change, or proposed change, in use by the land owner, price increase due to publicity given to contemplated Government acquisition, or abnormal increases in market value.

(3) Where there is a definite possibility of private construction which would constitute obstructions in existing or proposed glide angle planes and transitional planes at air bases.

§ 644.167 Implementation.

When a District or Division Engineer determines that any of the conditions described in § 644.166(b) exist in connection with any proposed land acquisition project for military purposes not yet authorized by law, or if authorized, not yet covered by a real estate directive, he will initiate the following actions:

(a) *Planning Report.* A planning report will be developed and submitted in accordance with Subpart A. The report will include the purpose for which the property is "likely to be needed"; the estimated probable increase in value, if applicable; and the justification for negotiating for options under the authority cited in § 644.166. The report will identify any real estate planning reports previously prepared which included the land in question. Any future planning reports relating to the same land will contain appropriate references to this report.

(b) *Property Identification.* Upon receipt of authority to acquire options and determination that funds are available, the District or Division Engineer will obtain and verify ownership data. If it is deemed necessary, title evidence may be obtained in accordance with §§ 644.61 through 644.72.

(c) *Appraisal.* Detailed tract appraisals will be prepared in accordance with subpart B.

(d) *Procurement of Options.* (1) Negotiations for the option will be in accordance with procedures outlined in §§ 644.83 through 644.85, except that ENG Form 2926, Option to Purchase Real Property, will be used. An attempt should be made to include a provision in the option giving the Government the right to acquire all or part of the land covered by the option where the land held in a single ownership can be separated into definable parcels and the possibility exists that, as planning is developed, the entire tract will not be required.

(2) The following instructions for the use of ENG Form 2926 will be followed:

(i) Insert amount to be paid for the option privilege. This amount cannot exceed five percent of the appraised value.

(ii) If the land has been separated into definable parcels in accordance with paragraph (d)(1) of this section, the option should describe each parcel and provide for a separate purchase price inclusive of any severance damage, as well as an agreed purchase price for the entire tract. The amount to be paid for the option privilege will be apportioned among the separate parcels.

(iii) The expiration date of the option on unauthorized projects should be far

§ 644.168

enough in advance to permit the insertion of a land acquisition line item in the next available budget; enactment of legislation; apportionment of funds by the Office of Management and Budget; clearance within the Department of Defense; clearance with the Committees on Armed Services of the Senate and House of Representatives, if required; issuance of a real estate directive; and allotment of funds.

(iv) Since options obtained under this section will normally be recorded, ENG Form 2926 will be acknowledged in the form used in the jurisdiction in which the real property is located.

(e) *Report.* When all options within the approval area have been acquired, and prior to their being exercised by the Government, a report will be made to HQDA (DAEN-REA-L) WASH DC 20314 including, but not limited to, the following items:

- (1) Project identification.
- (2) Directive authorizing acquisition of options.
- (3) Number of tracts optioned.
- (4) Expiration date of options.
- (5) Total acreage optioned.
- (6) Total amount to be paid if options are exercised.
- (7) Total amount paid for option privilege.
- (8) One copy of each option.
- (9) One copy of each appraisal.

§ 644.168 Exercise of options.

Upon issuance of a real estate directive for acquisition of the optioned real property, the District or Division Engineer will exercise the option and proceed with the acquisition in accordance with the procedures outlined in §§ 644.61 through 644.88.

Subpart D—Relocation Assistance Program

§ 644.175 Cross Reference.

See part 641 of this chapter for the regulations on the relocation assistance program.

[44 FR 3212, Jan. 15, 1979. Redesignated at 44 FR 35219, June 19, 1979]

32 CFR Ch. V (7-1-97 Edition)

Subpart E—[Reserved]

Subpart F—Disposal

SOURCE: 45 FR 71266, Oct. 27, 1980, unless otherwise noted.

§ 644.311 General.

Subpart F sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

§ 644.312 Applicability.

Subpart F is applicable to Division and District Engineers having real estate responsibilities.

§ 644.313 Authority.

The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, *et seq.*), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405-90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405-5 and AFR 87-15.

§ 644.314 Rules and regulations of the General Services Administration (GSA).

Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

(a) Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than \$1,000.

(b) Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

(c) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

(d) Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

§ 644.315 Disposal priorities.

Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force:

(a) Transfer to other Department of Defense agencies and the U.S. Coast Guard.

(b) Transfer to other Federal agencies.

(c) Conveyance to eligible non-Federal agencies.

(d) Sale to the public.

§ 644.316 Environmental considerations.

The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 *et seq.*) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has been submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200-1 and AR 200-2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

§ 644.317 Preserving historic landmarks and properties.

Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) will be set forth in subpart H (to be published) and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200-1 and AR 405-90 for military real properties and in ER 1105-2-460 for civil works real properties.

(a) The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(b) It is normally intended that the agency responsibilities under Section 106 of the National Historical Preservation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required.

§ 644.318 Compliance with State Coastal Zone Management Programs.

Subpart H will outline the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

§ 644.319 Protection of wetlands.

The requirements of Executive Order 11990, Protection of Wetlands, 42 FR 26961, (24 May 1977) are applicable to

the disposal of Federal lands and facilities, and the policy and procedures implementing the Order will be set forth in subpart H (to be published).

§ 644.320 Floodplain management.

The requirements of Executive Order 11988, Floodplain Management, 42 FR 26951, (24 May 1977) and its implementation will be outlined in subpart H (to be published). In accordance with ER 1165-2-26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

§ 644.321 Nondiscrimination covenant.

As required by Section 101-47.307-2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under section 101-47.304.9(4) of the FPMR:

The grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

§ 644.322 Disposition of proceeds from disposal.

(a) *Land and Water Conservation Fund.* Except as provided in paragraphs (b) and (c) of this section and unless otherwise obligated by existing or future acts of Congress, all proceeds re-

ceived from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C. 460L-5(a), FPMR Section 101-47.307-6). This includes the net proceeds from the sale of timber and structures.

(b) *Department of Defense Family Housing Management Account.* Section 501(b) of Pub. L. 87-554, as amended, 42 U.S.C. 1594a-1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700).

(c) *Proceeds from Sale or Transfer of Property Acquired.* Under section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph (a) of this section.

§ 644.323 Neutral language.

Wherever the words "man", "men", or their related pronouns appear in this

subpart, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant to include both female and male sexes.

§§ 644.324–644.325 [Reserved]

PROCEDURE FOR PLACING REAL
PROPERTY IN EXCESS STATUS

§ 644.326 Army military real property.

Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405-90.

§ 644.327 Air Force military real property.

Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87-4.

§ 644.328 Army military leased property.

(a) Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division of District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed \$50,000.

(b) Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed \$100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

(c) Any leased command real estate not coming within the category outlined in paragraphs (a) and (b) of this section will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405-90.

§ 644.329 Army civil works real property.

(a) *Fee-Owned Land and Easements.* (1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN-REM) WASH DC 20314, accompanied by:

(i) A brief description of the character or nature of the land with an appropriately marked map showing the approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for excessing.

(ii) Description of buildings and improvements.

(iii) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(iv) Information as to when and how the property was acquired.

(v) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(vi) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) *Action by the Office of the Chief of Engineers.* When the value of an easement interest reported pursuant to (a)(1) of this section does not exceed \$1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of \$1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the

Secretary of the Army that authority be granted for disposal of the property.

(b) *Leaseholds.* When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with §§ 644.333 through 644.339, he will take necessary action to terminate the lease in accordance with the procedure outlined in §§ 644.444 through 644.471.

§§ 644.330–644.332 [Reserved]

SCREENING, REASSIGNMENT AND TRANSFER OF REAL PROPERTY

§ 644.333 Screening for defense needs.

Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

(a) *Procedure for Screening Army Military Property.* Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) Washington DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) *Fee-owned Land.* Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(i) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405-90. The sample screening message in ER 405-1-12 at Figure 11-1, or a letter similar in form

and content will be used without substantial deviation.

(ii) All action addressees and parties listed for information on Figure 11-1 in ER 405-1-12 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(iii) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph (e) of this section.

(iv) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405-90.

(2) *Capehart and Wherry Housing Projects.* Due to the complicated financial arrangements under which such projects are constructed and operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) Washington DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

(b) *Leaseholds, Buildings and Improvements.* Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405-90 and §§ 644.326 through 644.329, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of \$50,000 will be addressed to HQ, USAF. Other Air

Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) *Family Housing Leases.* Family housing leases under authority of Section 515, Pub. L. 84-161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) *Limit Screening.* Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) *Notice of Restoration Requirements.* All screening notices of leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

(c) *Procedure for Screening Civil Works Property.* Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this part will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the

Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

(d) *Screening of Air Force Property.* HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87-4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87-4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN-REM.

(e) *Report on Screening and Related Actions.* Immediately following the screening of fee-owned land, the DE will forward to DAEN-REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the requirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to §§ 644.340 through 644.347 and §§ 644.385 through 644.389. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

(f) *Property with an Estimated Value of \$50,000 or Less.* If the property has an estimated value of \$50,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

(g) *Estimated Value in Excess of \$50,000.* If military property has an estimated value in excess of \$50,000, it must be reported to the Armed Services Committees of Congress pursuant to title 10,

United States Code, section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

(h) *Date of Excess for Reporting Purposes.* From the above, it will be noted that where property has an estimated value in excess of \$100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

§ 644.334 Reassignment and transfer procedures.

Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. *Transfer* refers to changing the jurisdiction for using and administering real property from one military department to another.

(a) *Reassignment Procedures—Army—*
(1) *Military.* Reassignments of military real property are accomplished pursuant to a directive from DAEN-REM. These are not real estate disposal actions.

(2) *Civil Works.* Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) *Information Required.* Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN-REM as follows:

- (i) Reference to excess directive, if any.
- (ii) Description and map of lands.
- (iii) Date, manner, and cost of acquisition of land and improvements.
- (iv) Reference to any encumbrances which might affect the reassignment and use.
- (v) Proposed effective date of reassignment.
- (vi) Proposed new use.

(b) *Reassignment of Air Force Property.* The Air Force Staff reassigns real property within the Department of the Air Force.

(c) *Transfer of Military Property.* Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in §§ 644.400 through 644.443 and §§ 644.472 through 644.500.

§ 644.335 Screening of excess DOD property for nondefense Federal agency needs.

(a) *Screening by GSA.* (1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (§§ 644.348 through 644.367).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise

whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101-47.203-7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

(b) *Screening by Corps of Engineers.* Properties which are not reported to GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

§ 644.336 Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD).

Simultaneously with screening under § 644.335 notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101-47.203.5 FPMR). Where such notice is given, these departments will be notified promptly, if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

§§ 644.337—644.339 [Reserved]

CLEARANCES—ARMY MILITARY REAL PROPERTY

§ 644.340 Reports to the Armed Services committees.

(a) Sections 644.340 through 644.347 describe the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

(b) Title 10 U.S.C. 2662 as amended by Pub. L. 96-418, dated 10 Oct. 1980, provides, in part that:

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:

* * * * *

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than \$100,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$100,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$100,000.

(6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

* * * * *

(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(c) While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds \$100,000.

§ 644.341 Clearance with the Armed Services committees.

(a) Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of \$100,000, the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than \$100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

(b) For Army property, data will be furnished in the format shown in Figure 11-2 (ENG Form 2187-R, Real Estate Disposal Report) in ER 405-1-12, and three copies forwarded to HQDA (DAEN-REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three

weeks after receipt of the disposal directive when screening is not required.

(c) Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN-REZ-L) obtains clearance for transfer of Army property to a non-defense Federal agency where authorized by law.

§ 644.342 Prior approval of Department of Defense.

(a) DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of \$100,000.

(b) The data submitted pursuant to § 644.341 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

§ 644.343 Additional data for clearance with the committees.

To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187-R:

(a) Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red—Excess Area(s)
Green—Retained Area
Yellow—Previously Excessed Area(s)
Black or Dark Blue—Installation Boundary, heavy definition
Other Colors—for other purposes

(b) Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

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(c) Basis for disposal: Base closure announcement; E. O. Survey; Command Report of Excess; Report of Availability; etc.

(d) A list of and general terms of any outgrants in effect on the excess area.

(e) Whether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities.

(f) Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

(g) Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187-R. Include official name of installation and former designations.

(h) Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served.

(i) Probable impact on local economy, if any.

(j) Estimate of any annual savings in operating and maintenance costs.

(k) Statement as to exchange potential of excess area.

(l) Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

(m) Character and use of area in vicinity of excess area.

(n) Care and custody costs for excess area.

(o) Staff/MACOM coordination.

(p) Environmental Assessment.

(q) Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

(r) Congressional district in which the property is located.

§ 644.344 Coordination with GSA.

At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish copies to the DEs and to the

central and regional offices of GSA as advance information to permit preliminary disposal planning.

§§ 644.345–644.347 [Reserved]

REPORTS OF EXCESS REAL PROPERTY AND RELATED PERSONAL PROPERTY TO GENERAL SERVICES ADMINISTRATION (GSA)

§ 644.348 Delegation of authority to division and district engineers.

Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), subpart 101-47.3, has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with §§ 644.333 through 644.339, and has been cleared with congressional committees, if required, in accordance with §§ 644.340 through 644.347.

§ 644.349 Excess property reported for disposal.

The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real Property, as set forth in § 644.355:

(a) *Fee-owned*. All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of \$1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

(b) *Public Domain.* All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of \$1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see §§644.376 through 644.384 for procedures for disposal of public domain land). Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

§ 644.350 Excess property reported for screening.

The types of property described in paragraphs (a), (b), and (c) of this section must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

(a) Land held under lease, permit, license, easement, or similar instrument, other than listed in §644.351.

(b) Improvements located on non-excess Government-owned lands (including improvements on land held under permit from another Government agency; see §§644.376 through 644.384, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an esti-

mated net salvage value of \$1,000 or more.

(c) Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in §644.351) when, in the opinion of the DE, the improvements have a net salvage or market value of \$1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

(d) Fee-owned property which, with improvements and related personal property, in the opinion of the responsible Division or District engineer, have a fair market value of \$1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in §644.349(a) (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor).

§ 644.351 Excess property exempted from reporting.

No reports to GSA are required for the following types of excess property:

(a) Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than \$1,000 in the opinion of the responsible DE;

(b) Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than \$1,000 or are to be transferred to the owner of the land in restoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

(c) Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less than \$1,000.

(d) Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

(e) Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

(f) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain pursuant to §§ 644.376 through 644.384.

(g) Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers (with or without undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, part 101-43, Utilization of Personal Property. However, when such structures are located on leased or permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible.

§ 644.352 Evaluation and reporting of flood hazards.

Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of

the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101-47.202-2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105-2-40 for information on the Flood Plain Management Services Program.)

§ 644.353 Determination of values for reporting.

Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of \$1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

§ 644.354 Conditional reports of excess.

As an exception to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

(a) *Defense Industrial Reserve (DIR)*. The Defense Industrial Reserve Act 50 U.S.C. 451 *et seq.*, authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101-47.306-2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.)

(b) *Reserving Property for Civil Defense Purposes*. GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will

specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to cases where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advise.

§ 644.355 Preparation and submission of reports of excess.

(a) *Preparation*—(1) *General*. Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101-47.4902, and § 644.349 herein. However, since the type of information called for a Block 9 of standard form (SF) 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in §§ 644.516 through 644.539. Information on flood hazard will be included as required by § 644.352.

(2) *GSA Regulations*. Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the provisions of title 10, United States Code, section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) *Reports of Excess—Air Force Property*. The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and exe-

cution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE.

(4) *Reports of Excess—Army Property*. DEs will prepare the SF 118 and the schedules for excess Army property.

(b) *Submission*. Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF-79-6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

§ 644.356 Report on Government title.

In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

(a) The description of the property.
(b) The date title vested in the United States.

(c) All exceptions, reservations, conditions and restrictions relating to the title acquired.

(d) Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

(e) The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the

United States does not hold such legislative jurisdiction, the report on government title should so state.

(f) All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN-REM), WASH, DC 20314.

(g) If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See § 644.317 for information on historic preservation.)

§ 644.357 Outgrant instruments, appraisals and muniments of title.

There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (§ 644.356 of this part) will state that HQDA (DAEN-REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN-REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN-REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should

demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN-REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

§ 644.358 Deposit of proceeds from disposal of family housing in the family housing management account.

(a) Title 42 U.S.C. 1594a-1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See § 644.322(b).)

(b) The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

(c) Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118 a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

§ 644.359 Supplemental information.

The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN-REM will be fully informed, with recommendations, in order that the matter may be resolved through appropriate coordination with the GSA central office.

§ 644.360 Reports submitted for screening.

Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to § 644.350, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirements, pursuant to §§ 644.333 through 644.339, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the pe-

riod should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

§ 644.361 Distribution of report of excess.

Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

- (a) Complete copies to: (1) Regional Office, GSA—original and four copies.
- (2) District Engineer—one copy.
- (b) Division Engineer—one copy of the cover sheet (SF 118), and transmittal letter.
- (c) A complete copy, except Schedule C (SF 118c), to HQDA (DAEN-REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN-REM) WASH DC 20314.
- (d) Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

§ 644.362 Notice of receipt.

GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in §§ 644.368 through 644.375, will be figured from this date.

§ 644.363 Withdrawals or corrections of reports of excess.

- (a) Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number

as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction" will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

(b) Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN-REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN-REM. (See §§ 644.340 through 644.347, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of \$50,000.)

§ 644.364 Supply of forms.

Standard forms 118, 118a, 118b, and 118c, are not available in normal Army Adjutant General supply channels. The forms should be procured from GSA.

§§ 644.365—644.367 [Reserved]

CARE AND CUSTODY OF EXCESS AND SURPLUS PROPERTY

§ 644.368 Procedures and responsibilities for care, custody, accountability, and maintenance.

(a) *Department of the Army Military Property.* Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405-90.

(b) *Department of the Army Civil Works Property.* DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

(c) *Department of the Air Force Property.* Pursuant to AFR 87-4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

(d) *Department of Energy (DOE), National Aeronautics and Space Administra-*

tion (NASA), and Other Federal Agencies. Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

§ 644.369 Guidelines for protection and maintenance of excess and surplus real property.

Detailed guidelines are provided in FPMR Subsection 101-47.4913.

(a) *Calculated Risk.* These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

(b) *Improvements or Alterations.* FPMR Subsection 101-47.401-5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improvements or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practicable, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum

maintenance does not extend to historic places. Historic places in excess or surplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

§ 644.370 Transfer of custody to General Services Administration (GSA).

(a) Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101-47.202-10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

(b) The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement

that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

§ 644.371 Contracting for care and custody.

Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: “* * * An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia.” (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

§ 644.372 Care and custody through interim use.

(a) *General.* Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not

interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101-47.203-9 and 101-47.312).

(b) *Permits to other Federal Agencies.* Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR 101-47.203-8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

(c) *Leases for Non-Federal Use.* Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405-80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN-REM on an individual basis.

§§ 644.373–644.375 [Reserved]

RETURN OF PUBLIC DOMAIN LANDS AND LANDS OBTAINED ON A TEMPORARY BASIS FROM ANOTHER FEDERAL AGENCY

§ 644.376 Procedure for disposal of public domain land.

(a) Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and the U.S. Coast

Guard in accordance with §§ 644.333 through 644.339, will be processed for disposal in accordance with 43 CFR 2370-2374 and § 644.381 of this part. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land Management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in §§ 644.472 through 644.500. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN-REM) Washington, DC 20314 and to the appropriate GSA regional office.

(b) If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN-REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in § 644.350(d). Generally lands which are extensively improved will be recommended to BLM for disposal as excess property.

(c) If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN-REP) Washington, DC 20314.

(d) If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return

to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN-REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

§ 644.377 Formal revocation of public land withdrawals and reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN-REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

§ 644.378 Cancellation of permits.

(a) Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in §§ 644.326 through 644.332, will be returned to the Federal agency from which it was obtained.

(b) When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN-REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is

excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in §§ 644.348 through 644.347, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained.

(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of § 644.381. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN-REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

(c) The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in § 644.379.

(d) Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter

type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN-REM with recommendations that they will provide disposition instructions.

§ 644.379 Procedure for cancellation of permits.

(a) When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN-REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department or agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document;

(5) ENG Form 1440-R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

(b) Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in § 644.378(c), he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN-REM.

§ 644.380 Restoration of lands made available by other Government agencies.

(a) *Requirement.* Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdraw-

als from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in §§ 644.516 through 644.539 relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

(b) *Authority.* The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language:

Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies.

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

(c) *Determination of Restoration Costs.* ENG Form 1440-R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

(d) *Payments for, or in Lieu of Restoration—(1) Work Performed by the Department of the Army.* If the work is performed by the Department, payment

§ 644.381

will be made from funds available to the office performing the work.

(2) *Work Performed by Controlling Agency.* If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) *Payment in Lieu of Restoration.* If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on submission by the controlling agency of SF 1080 properly supported.

§ 644.381 Disposal of buildings and other improvements.

Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with §§ 644.472 through 644.500.

§§ 644.382—644.384 [Reserved]

PREDISPOSAL ACTION

§ 644.385 Record of excess classification.

The DE will establish a record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued.

§ 644.386 Utilization for other needs.

The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA

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(DAEN-REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

§ 644.387 Suspension of acquisition action on installations proposed for disposal.

When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN-REA-L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

§ 644.388 Army military—screening, clearance, preliminary report of excess, except where an E.O. 11954 survey has been made.

Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

(a) Immediately notify DAEN-REM by teletype, furnishing a brief statement of the real estate included in the recommendation.

(b) Promptly screen the property against Army and other defense requirements if required by and in accordance with §§ 644.333 through 644.339, and advise DAEN-REM of the results.

(c) As soon as the screening message is dispatched under § 644.388(b), or immediately upon receipt of a disposal directive from DAEN-REM when screening is not required by §§ 644.333 through 644.339, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187-R, Disposal Report, for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with §§ 644.340 through 644.347. This should be forwarded to DAEN-REZ-L within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN-REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

(d) DOD approval of the disposal (property having estimated value in excess of \$100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of \$100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

§ 644.389 Army military—modified predisposal procedures where E.O. 11954 surveys have been made.

(a) DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

(b) If property is to be declared excess as a result of a decision by the De-

partment of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405-90 to HQDA (DAEN-REM) Washington, DC 20314 within 15 days. DEs will be furnished a copy of the report.

(c) Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187-R, if required, for submission to DAEN-REZ-L.

(d) When the Report of Excess is approved, DAEN-REM will advise the DE and will request that screening be initiated. The approved report will be promptly referred through channels to the DE for further appropriate action.

(e) The ENG Form 2187-R will be forwarded to DAEN-REM not later than 15 days after receipt of the approved Report of Excess.

(f) As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

(g) When the estimated value of the property does not exceed \$100,000 and preparation of an ENG Form 2187-R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN-REM of the date the SF 118 will be submitted to GSA.

§ 644.390 Executive Order 11954 surveys of civil works properties.

Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in chapter 8 of ER 405-1-12.

§ 644.391 Predisposal conference.

(a) Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal

Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405-90, AFR 87-4, and §§ 644.368 through 644.375.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date.

(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

(b) It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

(c) A report on the predisposal conference will be forwarded to DAEN-REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

(d) When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with ap-

propriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

§ 644.392 Air Force—preliminary report of excess.

The DAF will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

§ 644.393 Final report of excess to GSA.

Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish HQDA (DAEN-REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with §§ 644.348 through 644.367. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

§ 644.394 Protection of disposal information.

To prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340-16), until such time as the property is